

SUMMONS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

Ron Joseph, as Director of the Department of General Services; Department of General Services of the State of California; All State Police Equipment Co., a California corporation; and

DOES 100, inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Sigarms Inc.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California
720 9th Street

Sacramento, CA 95814

Sacramento Superior Court

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Theresa C. Lopez, Esq.

949-263-8414

Crowell & Moring LLP

3 Park Plaza, 20th Floor

Irvine, CA 92614

DATE: JUL 14

Clerk, by

A. MACIAS

Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☒ other (specify): 416.50

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

(SEAL)

RANDALL L. ERICKSON (SBN 52357)
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CROWELL & MORING LLP
8 Park Plaza, 20th Floor
Irvine, California 92614
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Facsimile: (949) 263-8414

Attorneys for Plaintiff
Sigarms Inc.

JUL -6 PM 2:31

LEGAL PROCESS #2

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SIGARMS INC.,

Petitioner and Plaintiff,

v.

RON JOSEPH, as Director of the
Department of General Services;
DEPARTMENT OF GENERAL
SERVICES of the State of California;
ALL STATE POLICE EQUIPMENT
CO., a California corporation; and
DOES 1 through 100, inclusive,

Respondents and Defendants.

CASE NO.: 06CS00965

PETITION FOR WRIT OF
MANDATE

- AND -

By Fax

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

Dept. 11

July 13, 2006
9AM

Ohnesim

> TRO

Petitioner and Plaintiff Sigarms, Inc. ("Sigarms") respectfully submits this
petition for a writ of mandate, requests the immediate issuance of a temporary
restraining order and order to show cause re preliminary injunction, and complains
of Respondents and Defendants Ron Joseph, as Director of the Department of
General Services of the State of California ("Joseph"), the Department of General
Services of the State of California ("DGS"), and All State Police Equipment Co. ("All
State") and alleges as causes of action the following:

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STATEMENT OF THE CASE

The DGS has violated the clear and unequivocal requirements of the State Public Contract Code and the DGS's own Purchasing Authority Manual with respect to Solicitation # 55268. The Invitation for Bid ("IFB") under Solicitation # 55268 was issued by the DGS on behalf of the California Highway Patrol ("CHP") and sought the procurement of 9,736 Smith & Wesson 4006TSW semi-automatic pistols.

Under Public Contract Code section 10301,¹ any public contract in excess of \$25,000 must be competitively bid. Section 10301 provides an exception to this general rule "in cases where the agency and the department agree that an article of a specified brand or trade name is the only article which will properly meet the needs of the agency." When competition is so limited, the State Administrative Manual requires that the procuring agency submit a statement "fully explaining why the product specified is necessary . . . This statement should include at least the following: [t]he unique performance factors of the product specified; [w]hy are these specific factors required; [and] [w]hat other products have been examined and rejected and why." State Administrative Manual § 3555 (a copy of which is attached hereto as Exhibit A). Here, the CHP submitted a sole brand justification to the DGS in conjunction with its Purchase Estimate, which the DGS approved. However, by designating a sole brand in the IFB and requiring that any bidder be a Smith & Wesson factory authorized distributor, the IFB effectively limited this bid to a sole supplier since there was only one Smith & Wesson factory authorized distributor in California, namely, All State. This unquestionably had the effect of

¹ Public Contract Code Section 10301 provides: "Except in cases when the agency and the department agree that an article of a specified brand or trade name is the only article that will properly meet the needs of the agency, or in cases where the State Board of Control has made a determination pursuant to Section 10308, all contracts for the acquisition or lease of goods in an amount of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, shall be made or entered into with the lowest responsible bidder meeting specifications."

1 stifling competition, thereby frustrating the purposes behind the competitive
2 bidding statutes, and providing an undue advantage to the awardee, All State.

3 Since the IFB was limited to a sole supplier, it did not allow for competitive
4 bidding as required by Public Contract Code section 10801. Therefore, under the
5 section 5.1.4² of Chapter 5 of the DGS's Purchasing Authority Manual (a complete
6 and accurate copy of which is attached hereto as Exhibit B), the CHP was required
7 to submit to the DGS a Non-Competitive Bid ("NCB") justification. Rita Hamilton,
8 Deputy Director of the DGS, confirmed in an April 26, 2006, letter to Sigarms that
9 the CHP did not submit an NCB justification. She further stated that the DGS had
10 identified four potential bidders prior to issuing the IFB and therefore no NCB
11 justification was required since the IFB was competitively bid. However, as
12 Sigarms has subsequently learned, only one of the four bidders identified by the
13 DGS was actually qualified to bid at the time the IFB was issued, thereby making
14 this a non-competitive bid contract.

15 "[C]ompetitive bidding requirements 'necessarily imply equal opportunities to
16 all whose interests or inclinations may impel them to compete at the bidding.'"

17 Domar Electric, Inc. v. City of Los Angeles, 4 Cal. 4th 161, 173, 36 Cal. Rptr. 2d 521
18 (1994). Moreover,

19 [C]ompliance with the terms of a statute requiring the
20 letting of certain contracts by a public agency such as a
21 municipal corporation or county by competitive bidding
22 and the advertising for bids is mandatory with respect to
23 those contracts coming within the terms of the statute; a
24 contract made without compliance with the statute is void
25 and unenforceable as being in excess of the agency's
26 power.

26 ² Section 5.1.4 of the Purchasing Authority Manual provides: "There are two methods
27 for justifying NCB contracts as follows: [¶] • NCB contract justifications executed on an
28 individual basis. [¶] • Special Category NCB Request (SCR), where a department
determines that a significant number of repeat NCB contracts for a particular category of
goods and/or services

1 Miller v. McKinnon, 20 Cal. 2d 83, 87-88, 124 P.2d 34 (1942) (emphasis added); see
2 also Cal. Pub. Cont. Code § 10421 (stating that any public contract entered into in
3 violation of Public Contract Code is void).

4 With the mockery of competitive bidding that has occurred here, the State of
5 California and its taxpayers lost out on a savings of almost \$2 million based on the
6 Sigarms bid versus the All State bid. Sigarms would have offered its equivalent
7 semi-automatic pistol for approximately \$599 per unit and would have paid a trade-
8 in for the old CHP Smith & Wesson pistols of \$349 per unit, which would have
9 resulted in a net bid of more than \$2 million less than the bid submitted by All
10 State and wrongfully accepted by the DGS.

11 Due to the DGS's wrongful act of approving the insupportable sole brand
12 designation and further compounding that wrongful act by allowing a non-
13 competitive bid to proceed to award, despite being apprised of the illegality of it by
14 Sigarms, the procurement proceeding has been rendered defective and irreparably
15 injured, making the entire procurement process contrary to law and void.

16 Under Public Contract Code section 10421,⁸ this Court is authorized to
17 declare void any public contract entered into in violation of the Public Contract
18 Code as it relates to procurement of goods or services. Furthermore, "[i]f the court
19 finds substantial evidence of such a violation, it may issue a temporary injunction to
20 prevent any further dealings upon the contract or other transaction, pending a final
21 determination on the merits of the case." Cal. Pub. Cont. Code § 10421.

22
23 ⁸ Public Contract Code § 10421 provides: "The state, or any person acting on behalf of
24 the state, may bring a civil action seeking a determination by the Superior Court that a
25 contract or other transaction has been entered in violation of any provision of this chapter.
26 If the court finds substantial evidence of such a violation, it may issue a temporary
27 injunction to prevent any further dealings upon the contract or other transaction, pending a
28 final determination on the merits of the case. If the action results in a final determination
that the contract or other transaction has been entered in violation of this chapter, it shall
be void, and the state or person bringing the action shall be awarded costs and attorney's
fees. This section shall not be construed to permit an award of costs and attorney fees to
the person or entity contracting or otherwise transacting with the state."

1 For these reasons, a writ of mandate should issue to require DGS to void the
2 contract it has awarded to and entered into with All State, to terminate and rescind
3 the defective IFB, to revise and issue a new IFB allowing for the procurement of the
4 Smith & Wesson 4006TSW or its equivalent, and to comply with the plain and
5 unequivocal provisions of the Public Contract Code and the DGS's Purchasing
6 Authority Manual.

7 JURISDICTION

8 1. Sigarms is, and at all times pertinent herein was, a corporation in good
9 standing, duly formed and operating under the laws of the State of New Hampshire,
10 and qualified to do business in the State of California.

11 2. Joseph is the Director of the DGS of the State of California, which is a
12 subdivision of the executive branch of the State of California.

13 3. The DGS of the State of California is a subdivision of the executive
14 branch of the State of California.

15 4. Sigarms is informed and believes that All State is a corporation
16 organized under the laws of the State of California and licensed to do business in
17 the State of California.

18 5. Sigarms is ignorant of the true names and capacities of respondents/
19 defendants named herein as Does 1 through 100 inclusive, and therefore names
20 these respondents/defendants by such fictitious names. Sigarms will amend this
21 petition and complain to allege respondents/defendants' true names and capacities
22 when they are ascertained. Each of the fictitiously named respondents/defendants
23 is responsible in some manner for the matters alleged herein.

24 6. Joseph and the DGS of the State of California are collectively referred
25 to herein as "DGS."

26 7. Sigarms is informed and believes, and based thereon alleges, that, at
27 all times mentioned herein, each respondent/defendant was the agent, employee,
28 partner or joint venturer of each of the other respondents/defendants and, in doing

1 the things herein alleged, acted within the course and scope of such agency,
2 employment, partnership or joint venture, with the knowledge and consent of each
3 of the other respondents/defendants. Each respondent/defendant has authorized,
4 ratified and approved the acts of each of the remaining respondents/defendants.

5 STATEMENT OF FACTS

6 8. On February 15, 2006, the CHP submitted its sole brand justification
7 along with its Purchase Estimate to the DGS. Among the reasons given by the CHP
8 for its designation of Smith & Wesson pistols was the costs associated with training
9 officers on a new pistol, the need for "total interchangeability" of the old and new
10 weapons, and the time required to test and evaluate a new weapons system.
11 Nowhere in the justification does the CHP even attempt to identify any other
12 products it examined and rejected. Thus, the justification does not comply with
13 section 3555 of the State Administrative Manual and should not have been
14 approved by the DGS. (A complete and accurate copy of the Purchase Estimate is
15 attached hereto as Exhibit C.)

16 9. On March 30, 2006, the DGS issued an IFB under Solicitation # 55268
17 for the procurement of 9,736 Smith & Wesson 4006TSW semi-automatic pistols.
18 The IFB limited the potential bidders to those who were "factory authorized
19 distributors or manufacturer, and offer factory authorized service for the weapon."
20 (A complete and accurate copy of the Invitation for Bids is attached hereto as
21 Exhibit D.)

22 10. Sigarms is informed and believes that as of the time the IFB was
23 issued and the contract thereunder awarded, there was only one factory authorized
24 distributor of the Smith & Wesson 4006TSW in California, namely, All State.

25 11. On April 10, 2006, pursuant to Paragraph 12 of the IFB's Bidder
26 Instructions, Sigarms sent a statement of concern to the DGS concerning the sole
27 brand designation in the IFB as well as the non-competitive nature of the bid. (A

28 ///

1 complete and accurate copy of Sigarms' April 10, 2006 letter is attached hereto as
2 Exhibit E.)

3 12. On April 26, 2006, Rita Hamilton, Deputy Director of the DGS,
4 responded to Sigarms' statement of concern stating that the CHP had submitted a
5 sole brand justification to the DGS, which had been reviewed and approved. Ms.
6 Hamilton further stated that the CHP was not required to submit a Non-
7 Competitive Bid ("NCB") justification because the bid was competitive since four
8 potential bidders had been identified prior to the IFB being issued. (A complete and
9 accurate copy of Ms. Hamilton's April 26, 2006 letter is attached hereto as Exhibit
10 F.)

11 13. Enclosed with Ms. Hamilton's April 26, 2006 letter was an April 6,
12 2006, letter from M.L. Brown, the CHP Commissioner, to Sigarms explaining the
13 CHP's reasoning behind the sole brand designation. In his letter, the Commissioner
14 justified the sole brand designation as follows: (1) that the CHP was not changing
15 its weapons systems, but merely replacing worn pistols and replenishing its stock of
16 pistols; (2) that the CHP has 15 years of training invested in the current⁴ duty
17 pistol; (3) that the dependability and performance of the current duty pistol had
18 been proven in the field; (4) that procuring the Smith & Wesson 4006TSW allows
19 the continued use of the same training magazines and magazine pouches; and (5)
20 that procuring the Smith & Wesson 4006TSW does not require additional training
21 for personnel. (A complete and accurate copy of the April 6, 2006 letter from the
22 CHP Commissioner to Sigarms, which was enclosed with the DGS's April 26, 2006,
23 letter, is attached hereto as Exhibit G.)

24 14. On April 13, 2006, All State submitted a bid to the DGS offering the
25 Smith & Wesson 4006TSW pistols at \$683 per unit for a total cost of \$6,649,688.00.

26 ⁴ The fact that the CHP's justifications refer to the current duty pistol is important
27 because the current duty pistol is the Smith & Wesson 4006, not the Smith & Wesson
28 4006TSW, which is the make and model designated in Solicitation # 55268. (See Exhibit C
hereto (Sole Brand Justification attached to Purchase Estimate).)

1 All State also offered a trade-in allowance of \$170 per unit for the 7,718 old CHP
2 Smith & Wesson 4006 pistols to be taken out of service by the CHP once the new
3 pistols were purchased, for a total trade-in allowance of \$1,312,060.00. Deducting
4 the trade-in allowance from the total new pistol purchase price, All State's bid
5 totaled \$5,337,628.00. (A complete and accurate copy of All State's April 13, 2006
6 bid is attached hereto as Exhibit H.)

7 15. On April 16, 2006, Sigarms submitted a bid to the DGS offering its Sig
8 Sauer semi-automatic pistol, Item #E26R-40-SSS-G, which, but for the Smith &
9 Wesson 4006TSW make and model designation, conformed to the CHP
10 specifications in all respects. Sigarms offered this product at \$599 per unit for a
11 total cost of \$5,831,864.00. Sigarms also offered a trade-in allowance of \$349 per
12 unit for the 7,718 old CHP Smith & Wesson 4006 pistols to be taken out of service
13 by the CHP once the new pistols were purchased, for a total trade-in allowance of
14 \$2,693,582.00. Deducting the trade-in allowance from the total new pistol purchase
15 price, Sigarms' bid totaled \$3,138,282.00—more than \$2 million less than All State's
16 bid. (A complete and accurate copy of Sigarms' April 16, 2006 bid is attached hereto
17 as Exhibit I.)

18 16. Sigarms is informed and believes that as of the April 18, 2006 bid
19 deadline, only two bidders had submitted bids to the DGS in response to Solicitation
20 #55268's IFB – All State and Sigarms. (A complete and accurate copy of a news
21 release entitled "CHP Purchases Smith & Wesson Pistols" posted on the CHP
22 website, which includes a chronology of this bid process, is attached hereto as
23 Exhibit J.)

24 17. On May 10, 2006, the DGS awarded the contract under Solicitation
25 #55268 to All State.

26 18. On June 11, 2006, the Sacramento Bee published an article entitled
27 "Watchdog Report: Bidding for CHP Pistols Faulted – Gunmaker Claims
28 Procurement Process Favored Rival Firm." Therein, Andrew McIntosh, the

1 Sacramento Bee reporter, detailed his investigation of the faulty procurement
2 process underlying Solicitation #55268. According to the article, an interview with
3 the Assistant CHP Commissioner, Kevin Green, revealed that CHP administrators
4 did not believe they had "time to run a formal evaluation process involving several
5 competing guns." The investigation further revealed that of the four potential
6 bidders allegedly identified prior to issuance of the IFB, only one, All State, was
7 actually qualified to bid because it was the only factory authorized distributor of the
8 Smith & Wesson 4006TSW in California. (A complete and accurate copy of the June
9 11, 2006 Sacramento Bee article is attached hereto as Exhibit K.)

10
11 PETITION FOR WRIT OF MANDATE

12 Count One

13 (Violation of Public Contract Code § 10301

14 Against Defendants Joseph, DGS and Does 1 through 100)

15 19. Sigarms realleges and incorporates herein by reference each and every
16 allegation contained in paragraphs 1 through 18, inclusive, set forth above.

17 20. Public Contract Code section 10301 requires generally that all
18 contracts in excess of \$25,000 be competitively bid.

19 21. Section 10301 allows competition to be limited under certain
20 conditions, including when the procuring agency and the DGS agree that "an article
21 of a specified brand or trade name is the only article that will properly meet the
22 needs of the agency." In the absence of such a determination by the DGS, the DGS
23 must solicit bids to furnish equivalent equipment made by other manufacturers.

24 See 31 Cal. Op. Atty. Gen. 161, 162 (April 7, 1958).

25 22. In connection with its Purchase Estimate, the CHP submitted a sole
26 brand justification to the DGS, which the DGS reviewed and approved.

27 23. By allowing the sole brand specification, coupled with the further
28 limiting specification that only factory authorized distributors or the manufacturer

1 of the Smith & Wesson 4006TSW were permitted to submit bids, the DGS, in effect,
2 limited the bid to a single supplier, namely, All State. The three other bidders
3 allegedly identified by the DGS in advance of issuing the bid were not factory
4 authorized distributors of the Smith & Wesson 4006TSW for the State of California.

5 24. Sigarms is informed and believes that the CHP's justification for the
6 sole brand designation was contrived and that, instead, the CHP requested
7 procurement of the Smith & Wesson make and model as an expedient since it did
8 not have time to conduct a formal evaluation process with competing
9 manufacturers. In fact, the CHP admitted in its sole brand justification that its
10 decision was based at least in part on timing: "Testing and evaluating a new
11 weapons system will require six to eight months to complete and will not allow
12 sufficient time to procure the necessary weapons for graduating CHP officers being
13 assigned to the Los Angeles and San Francisco metropolitan areas." (See Exhibit
14 A.)

15 25. Sigarms is informed and believes that the DGS failed to make an
16 adequate and/or non-arbitrary determination that the Smith & Wesson 4006TSW
17 make and model "[was] the only article that [would] properly meet the needs of the
18 [CHP]," as required by Public Contract Code section 10301.

19 26. Because of DGS's blatant disregard and violation of the provisions of
20 the Public Contract Code, Sigarms has been prejudiced and irreparably injured in
21 the procurement process because the sole brand designation prevented Sigarms
22 from being able to submit a responsive bid thereby unfairly eliminating Sigarms
23 from the procurement process.

24 27. Because of DGS's blatant disregard and violation of the provisions of
25 the Public Contract Code, DGS has created a fatal defect in the procurement
26 process, irreparably damaging the procurement and preventing the State from
27 achieving the maximum economic advantage to the State, as required by the State
28 Administrative Manual.

28. Sigarms has attempted to resolve DGS's violations of the Public Contract Code. However, DGS has refused Sigarms' efforts at informal resolution.

29. The DGS's conduct is contrary to applicable law, including Public Contract Code section 10301.

30. Sigarms seeks the issuance of a writ because there is no plain, speedy, and adequate remedy in the ordinary course of law.

31. Sigarms requests recovery of attorney's fees pursuant to Code of Civil Procedure section 1021.5 because Sigarms is enforcing an important right affecting the public interest, namely, ensuring that the State receives the pistols needed by the CHP at the lowest price.

32. Sigarms also requests recovery of attorney's fees pursuant to Public Contract Code section 10421 which provides that if there is a "final determination that the contract or other transaction has been entered in violation of this chapter, it shall be void, and the state or person bringing the action shall be awarded costs and attorney's fees."

WHEREFORE, Sigarms prays for relief as set forth below.

Count Two

(Violation of Purchasing Authority Manual §§ 5.1.0, 5.1.4, and 5.2.0

Against Defendants Joseph, DGS and Does 1 through 100)

33. Sigarms realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 32, inclusive, set forth above.

34. By allowing the sole brand specification, coupled with the further limiting specification that only factory authorized distributors or the manufacturer of the Smith & Wesson 4006TSW were permitted to submit bids, the DGS, in effect, limited the bid to a single supplier, namely, All State. The three other bidders allegedly identified by the DGS in advance of issuing the bid were not factory authorized distributors of the Smith & Wesson 4006TSW for the State of California.

35. Where there is only one known source of a product, the procurement is subject to the provisions regarding NCB Contracts set forth in Chapter 5 of the Purchasing Authority Manual. See Purchasing Authority Manual § 5.1.0.

36. Section 5.2.0 of the Purchasing Authority Manual requires that agencies desiring to enter into non-competitively bid contracts submit to the DGS an NCB justification form for approval.

37. There are only two methods by which an NCB may be justified: (1) "NCB contract justifications executed on an individual basis" and (2) a "Special Category NCB Request (SCR), where a department determines that a significant number of repeat NCB contracts for a particular category of goods and/or services will occur during a specified period of time." Purchasing Authority Manual § 5.1.4.

38. The IFB under Solicitation #55268 was non-competitive since it was, in effect, open to only a single supplier, All State, since All State was the only factory authorized distributor of the Smith & Wesson 4006TSW semi-automatic pistols in California at the time of the bid.

39. Since the bid was limited to a single supplier, the CHP was required to submit a NCB contract justification pursuant to Section 5.1.4 of the Purchasing Authority Manual.

40. The CHP failed to submit an NCB justification in connection with the bid issued under Solicitation #55268.

41. Sigarms is informed and believes that, had the DGS required the CHP to submit an NCB justification for review and approval, then the DGS would have determined upon review of the NCB justification that the Smith & Wesson brand was unnecessarily restrictive, and would have opened the procurement to manufacturers and distributors of equivalent equipment meeting the CHP's pistol specifications, other than the Smith & Wesson make and model.

42. Because of DGS's blatant disregard and violation of the provisions of its own Purchasing Authority Manual, Sigarms has been prejudiced and irreparably

1 injured in the procurement process because the sole brand designation and
2 resulting non-competitive bid prevented Sigarms from being able to submit a
3 responsive bid and thereby unfairly eliminated Sigarms from the procurement
4 process.

5 43. Because of DGS's blatant disregard and violation of the provisions of
6 its own Purchasing Authority Manual, DGS has created a fatal defect in the
7 procurement process, irreparably damaging the procurement and preventing the
8 State from achieving the maximum economic advantage to the State, as required by
9 the State Administrative Manual.

10 44. Sigarms has attempted to resolve DGS's violations of its own
11 Purchasing Authority Manual. However, DGS has refused Sigarms' efforts at
12 informal resolution.

13 45. The DGS's conduct is contrary to applicable law, including section 5.1.4
14 of the Purchasing Authority Manual.

15 46. Sigarms seeks the issuance of a writ because there is no plain, speedy,
16 and adequate remedy in the ordinary course of law.

17 47. Sigarms requests recovery of attorney's fees pursuant to Code of Civil
18 Procedure section 1021.5 because Sigarms is enforcing an important right affecting
19 the public interest, namely, ensuring that the State receives the pistols needed by
20 the CHP at the lowest price.

21 48. Sigarms also requests recovery of attorney's fees pursuant to Public
22 Contract Code section 10421 which provides that if there is a "final determination
23 that the contract or other transaction has been entered in violation of this chapter,
24 it shall be void, and the state or person bringing the action shall be awarded costs
25 and attorney's fees."

26 WHEREFORE, Sigarms prays for relief as set forth below.

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28 ///

COMPLAINT

FOR INJUNCTIVE AND DECLARATORY RELIEF

FIRST CAUSE OF ACTION

(Injunctive Relief Against All Defendants)

49. Sigarms realleges and incorporates herein by reference each and every allegation in paragraphs 1 through 48, inclusive, set forth above.

50. As more fully set forth above, the DGS has violated Public Contract Code section 10301.

51. As more fully set forth above, DGS has violated section 5.1.4, of the DGS's Purchasing Authority Manual.

52. Sigarms has attempted to resolve DGS's violations of the Public Contract Code and the Purchasing Authority Manual. However, DGS has refused Sigarms' efforts at informal resolution.

53. The DGS's conduct is contrary to applicable law, including Public Contract Code section 10301 and sections 5.1.0, 5.1.4 and 5.2.0 of the Purchasing Authority Manual.

54. Sigarms has no plain, speedy, and adequate remedy in the ordinary course of law.

55. The DGS's wrongful conduct has irreparably damaged the subject procurement process, rendering it impossible for all bidders to be treated equitably and equally. Further, DGS's wrongful conduct has made it impossible for the State of California to obtain a contract that achieves the maximum economic advantage to the State.

56. Sigarms requests that an injunction issue voiding the contract the DGS awarded to and entered into with All State, requiring DGS to revise and re-issue a new IFB allowing for the procurement of the Smith & Wesson 4006TSW or

1 equivalent equipment, and requiring DGS to comply with the provisions of the
2 Public Contract Code and its Purchasing Authority Manual.

3 57. Sigarms further requests that a temporary restraining order issue
4 enjoining DGS from proceeding further with performance of the illegal contract,
5 including instructing All State to immediately cease ordering of and distribution of
6 the Smith & Wesson 4006TSW in response to the illegal contract. Further, Sigarms
7 requests that an order to show cause re preliminary injunction also issue enjoining
8 DGS from proceeding further with performance of the illegal contract, including
9 instructing All State to immediately cease ordering of and distribution of the Smith
10 & Wesson 4006TSW in response to the illegal contract.

11 58. Sigarms has no adequate remedy at law to compel DGS to comply with
12 the provisions of the Public Contract Code and the Purchasing Authority Manual.

13 59. Sigarms requests recovery of attorney's fees pursuant to Code of Civil
14 Procedure section 1021.5 because Sigarms is enforcing an important right affecting
15 the public interest, namely, ensuring that the State receives the pistols needed by
16 the CHP at the lowest price.

17 60. Sigarms also requests recovery of attorney's fees pursuant to Public
18 Contract Code section 10421 which provides that if there is a "final determination
19 that the contract or other transaction has been entered in violation of this chapter,
20 it shall be void, and the state or person bringing the action shall be awarded costs
21 and attorney's fees."

22 WHEREFORE, Sigarms prays for judgment as set forth below.

23
24 SECOND CAUSE OF ACTION

25 (Declaratory Relief Against All Defendants)

26 61. Sigarms realleges and incorporates herein by reference each and every
27 allegation in paragraphs 1 through 60, inclusive, set forth above.

1 62. An actual controversy has arisen and now exists concerning the
2 legality of DGS's conduct and, consequently, the legality of the contract it entered
3 into with All State pursuant to Solicitation #55268.

4 63. Sigarms contends that DGS has acted in violation of the requirements
5 of Public Contract Code section 10301 and sections 5.1.0, 5.1.4 and 5.2.0 of the
6 Purchasing Authority Manual by (1) approving the sole brand designation
7 submitted by the CHP, (2) by not requiring the CHP to submit a NCB justification,
8 and (3) by awarding and entering into the contract with All State for the purchase
9 of the Smith & Wesson 4006TSW semi-automatic pistols. DGS contends that it has
10 acted lawfully and according to the terms of the Public Contracting Code and
11 Purchasing Authority Manual.

12 64. A judicial declaration of the legality of DGS's conduct is necessary and
13 appropriate at this time so as to determine whether DGS wrongfully has violated
14 the provisions of the Public Contract Code and the Purchasing Authority Manual
15 and consequently awarded and entered into an illegal contract with All State.

16 65. A judicial declaration of the legality of DGS's conduct also is necessary
17 and appropriate at this time so as to determine whether DGS's wrongful and
18 unlawful conduct has irreparably damaged the subject procurement, such that the
19 procurement had been rendered fatally defective and the public contract resulting
20 therefrom illegal and void, requiring that a new procurement process be instituted.

21 66. Sigarms requests recovery of attorney's fees pursuant to Code of Civil
22 Procedure section 1021.5 because Sigarms is enforcing an important right affecting
23 the public interest, namely, ensuring that the State receives the pistols needed by
24 the CHP at the lowest price.

25 67. Sigarms also requests recovery of attorney's fees pursuant to Public
26 Contract Code section 10421 which provides that if there is a "final determination
27 that the contract or other transaction has been entered in violation of this chapter,
28

1 it shall be void, and the state or person bringing the action shall be awarded costs
2 and attorney's fees."

3 WHEREFORE, Sigarms prays for relief and judgment as follows:
4

5 On the Petition for Writ of Mandate:

6 1. For issuance of an immediate temporary restraining order enjoining
7 the DGS:

- 8 a. from proceeding further with the performance of the illegal
9 contract awarded to and entered into with All State, and
10 b. requiring DGS to instruct All State to cease performance of the
11 illegal contract awarded to it and entered into with the DGS,
12 pending a hearing on the order to show cause re preliminary injunction, or upon
13 further order of this court;

14 2. For issuance of an order to show cause re preliminary injunction, and
15 the issuance of a preliminary injunction, enjoining the DGS:

- 16 a. from proceeding further with the performance of the illegal
17 contract awarded to and entered into with All State, and
18 b. requiring DGS to instruct All State to cease performance of the
19 illegal contract awarded to it and entered into with the DGS,
20 pending the outcome of this writ petition or upon further order of this court;

21 3. That a writ of mandate issue ordering the DGS:

- 22 a. to terminate and rescind the illegal contract it awarded to and
23 entered into with All State, and
24 b. to revise and re-issue an Invitation for Bids under Solicitation
25 # 55268 seeking procurement of 9,736 Smith & Wesson
26 4006TSW semi-automatic pistols or equivalent equipment, and
27 c. to comply with the provisions of the Public Contract Code and
28 the Purchasing Authority Manual.

1 On the First Cause of Action for Injunctive Relief:

2 4. For issuance of an immediate temporary restraining order enjoining
3 the DGS:

- 4 a. from proceeding further with the performance of the illegal
5 contract awarded to and entered into with All State, and
6 b. requiring DGS to instruct All State to cease performance of the
7 illegal contract awarded to it and entered into with the DGS,
8 pending a hearing on the order to show cause re preliminary injunction, or upon
9 further order of this court;

10 5. For issuance of an order to show cause re preliminary injunction, and
11 the issuance of a preliminary injunction, enjoining the DGS:

- 12 a. from proceeding further with the performance of the illegal
13 contract awarded to and entered into with All State, and
14 b. requiring DGS to instruct All State to cease performance of the
15 illegal contract awarded to it and entered into with the DGS,
16 pending the outcome of this writ petition or upon further order of this court;

17 6. For a permanent injunction directing the DGS:

- 18 a. to terminate and rescind the illegal contract it awarded to and
19 entered into with All State, and
20 b. to revise and re-issue an Invitation for Bids on Solicitation
21 # 55268 seeking procurement of 9,736 Smith & Wesson
22 4006TSW semi-automatic pistols or equivalent equipment, and
23 c. to comply with the provisions of the Public Contract Code and
24 the Purchasing Authority Manual.

25 7. For a permanent injunction directing All State to cease all performance
26 under the void contract entered into between it and the DGS for the procurement of
27 the 9,736 Smith & Wesson 4006TSW semi-automatic pistols; and

28 8. For reasonable attorney's fees.

On The Second Cause of Action for Declaratory Relief:

9. For a declaration that the DGS has violated Public Contract Code section 10301 and section 5.1.4 of the DGS's Purchasing Authority Manual, thereby rendering the subject procurement process fatally defective;

10. For a declaration that the DGS should, and must in order to comply with the requirements of Public Contract Code section 10301 and section 5.1.4 of the Purchasing Authority Manual:

a. terminate and rescind the illegal contract it awarded to and entered into with All State, and

b. revise and re-issue an Invitation for Bids on Solicitation # 55268 seeking procurement of 9,736 Smith & Wesson 4006TSW semi-automatic pistols or equivalent equipment;

11. For a declaration that the contract entered into between the DGS and All State is void; and

12. For reasonable attorney's fees.

On the Petition and on All Causes of Action:

13. For costs of suit; and

14. For such other and further relief as the Court may deem just and proper.

DATED: July 6, 2006

CROWELL & MORING LLP

By: Theresa C. Lopez
 Randall L. Erickson
 Theresa C. Lopez
 Attorneys for Plaintiff
 Sigarms, Inc.

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VERIFICATION

I, RON COHEN, declare as follows:

1. I am the President and Chief Executive Office of Sigarms, Inc., a corporation, and the petitioner and plaintiff in the above-entitled proceeding. I am authorized to make this verification for and on behalf of said corporation.

2. I have read the foregoing petition for writ of mandate and complaint for injunctive and declaratory relief and know the contents thereof. The factual statements contained therein are true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of New Hampshire that the foregoing is true and correct.

Executed this 5th day of July, 2006, at Exeter, New Hampshire.

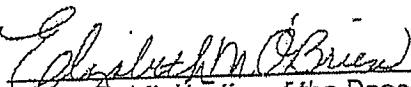
BY: 

RON COHEN

NOTARIZATION BELOW:

STATE OF NEW HAMPSHIRE
Rockingham, SS.

On this 5th day of July, 2006, before me the undersigned officer, personally appeared Ron Cohen, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he / she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.


Notary Public/Justice of the Peace

ELIZABETH M. O'BRIEN, Notary Public
My Commission Expires July 14, 2009

EXHIBIT "A"

STATE ADMIN. MANUAL
SECTION 3555